

# EXHIBIT 168



*experience does matter*

**CASE: In re: Pharmaceutical Industry Average Wholesale Price  
Litigation**

**DATE: March 16, 2008**

Enclosed is the Original of the transcript of the testimony of **Michael Sellers** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS

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Videotaped Rule 30(b)(6) Deposition  
of MICHAEL SELLERS, at 77 West Wacker  
Drive, Chicago, Illinois, commencing  
at 9:00 a.m. on Sunday, March 16,  
2008, before Donna M. Kazaitis, RPR,  
CSR No. 084-003145.

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<p style="text-align: right;">Page 242</p> <p>1 Q. I guess let me ask you which page was</p> <p>2 the actual attachment?</p> <p>3 A. This page to the attendees.</p> <p>4 (Indicating.)</p> <p>5 The others are pretty much the same</p> <p>6 document. And they were prepared for Laura</p> <p>7 Schumacher to give her some background on --</p> <p>8 MS. TABACCHI: I'm going to caution the</p> <p>9 witness not to reveal any communications between</p> <p>10 yourself and Ms. Schumacher.</p> <p>11 THE WITNESS: -- prices.</p> <p>12</p> <p>13 BY MS. ST. PETER-GRIFFITH:</p> <p>14 Q. Prices or pricing terms; is that it?</p> <p>15 A. Yes.</p> <p>16 Q. That's the last page, which appears to</p> <p>17 also be the second page with a line through it;</p> <p>18 right?</p> <p>19 A. Yeah. The first page, or the second</p> <p>20 page, did not have the last paragraph.</p> <p>21 Q. The parameter pricing, okay.</p> <p>22 A. Yeah.</p>	<p style="text-align: right;">Page 244</p> <p>1 Q. Then it says "Potential exposure on Ery</p> <p>2 products which are sold at forty to sixty percent</p> <p>3 below list." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. What did that mean?</p> <p>6 MS. TABACCHI: Objection, beyond the</p> <p>7 scope.</p> <p>8 THE WITNESS: Erythromycin was a drug</p> <p>9 that had gone off patent by 2001. It had been off</p> <p>10 patent for in fact a number of years prior.</p> <p>11 Abbott was the innovator of that drug.</p> <p>12 So because there were other generic</p> <p>13 companies in competition with our pharmaceutical</p> <p>14 brethren in Abbott, they had seen a price decline,</p> <p>15 as we would have expected, on their products in</p> <p>16 order to remain competitive with the generics.</p> <p>17 So I think what I was reflecting on</p> <p>18 there is the same kind of disparity that we were</p> <p>19 talking about was probably in existence on</p> <p>20 erythromycin products. They had not reduced their</p> <p>21 list price, at least as of this.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>
<p style="text-align: right;">Page 243</p> <p>1 Q. Now, let's go to Page 3. It says "Per</p> <p>2 directions from last meeting, discussed price</p> <p>3 adjustment with other divisions."</p> <p>4 Who did you talk to?</p> <p>5 A. I only recall talking to Joe Fiske in</p> <p>6 PPD. I may have talked to Ross and SPD, but</p> <p>7 that's not in my memory.</p> <p>8 Q. Is RPD Ross Products Division?</p> <p>9 A. Yes.</p> <p>10 Q. And SPD is --</p> <p>11 A. At that time it was called Specialty</p> <p>12 Products Division. It was animal health and</p> <p>13 agricultural products.</p> <p>14 Q. On your PPD discussion it says "Standard</p> <p>15 WAC prices at five percent below list." Do you</p> <p>16 see that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. What did that mean?</p> <p>19 A. This has been a few years.</p> <p>20 I think basically that their</p> <p>21 wholesale acquisition cost was five percent below</p> <p>22 what they publish as their list price, yes.</p>	<p style="text-align: right;">Page 245</p> <p>1 Q. Do you know why they didn't reduce their</p> <p>2 list price?</p> <p>3 MS. TABACCHI: Object to the form,</p> <p>4 beyond the scope.</p> <p>5 THE WITNESS: I was just asked to go</p> <p>6 find out.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. Now, if you could look further down</p> <p>9 beyond "Proposed Implementation Schedule" where it</p> <p>10 says "Definite Impact. Price Lost Due to</p> <p>11 Reduction." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. It says "List Price and Special Price</p> <p>14 Sales," for 2001, \$0.9 million. And is that</p> <p>15 "Annualized"?</p> <p>16 A. Yes.</p> <p>17 Q. \$1.8 million.</p> <p>18 What does that line mean?</p> <p>19 A. That means that, that goes back to what</p> <p>20 we were talking about before. When you reduce</p> <p>21 your list price, any sales that you would have</p> <p>22 anticipated making at a noncontract sales are</p>

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<p style="text-align: right;">Page 246</p> <p>1 going to come in at a lower price than what you 2 would have historically seen versus our 2001 3 expectation, making the price adjustments that we 4 were talking about we could expect that we'd get 5 \$900,000 less revenue in 2001 than we were 6 planning. And that was definite because that 7 would happen. 8 Q. Does that refresh your recollection from 9 before as to the impact analysis that you had 10 referenced? 11 A. Yeah. I said it was a few million. I 12 overstated it slightly originally. 13 Q. Let me ask you this: What was wrong 14 with keeping your catalog prices or Abbott keeping 15 its catalog prices where they were, meaning not 16 doing the catalog price reduction, but just 17 reporting lower prices to the pricing compendia 18 that were utilized for AWP purposes? 19 MS. TABACCHI: Object to the form, 20 beyond the scope of the Notice. 21 THE WITNESS: As far as we saw it, we 22 had one set of published prices. So what you give</p>	<p style="text-align: right;">Page 248</p> <p>1 a year-to-year basis with the contracting officer, 2 but per the terms of the agreement we could have 3 increased our FSS prices -- 4 Q. With regard to -- 5 A. -- if we took an inflationary increase 6 on the catalog. 7 Q. Okay. Where it says "Potential Impact - 8 Volume Lost Due to Reimbursement Reductions." Do 9 you see that? 10 A. Yes. 11 Q. It says "Alt. Site Product Sales 12 \$2.9 million, Annualized \$8.8 million." 13 A. Yes. 14 Q. First, let me ask you, what do you mean 15 by "volume lost due to reimbursement reductions"? 16 A. Well, when you're doing something like 17 this, especially if you're reviewing something of 18 a significant change to past practices with 19 management, I always tried to walk in saying these 20 are the impacts, this is what could result from a 21 decision to do this or that, whatever we were 22 talking about at the time.</p>
<p style="text-align: right;">Page 247</p> <p>1 to the compendia is what you publish. So if 2 you're going to report lower prices, you lower the 3 published prices. 4 BY MS. ST. PETER-GRIFFITH: 5 Q. With regard to where it says "Inability 6 to raise FSS prices" -- 7 A. Yes. 8 Q. -- \$0.1 million and then 0.2 million? 9 A. Yes. 10 Q. What does that mean? 11 A. FSS is Federal Supply Schedule. It's 12 our contract that we had with, it was actually 13 administered by the Veterans' Administration. It 14 was available for I think all federal government 15 entities to purchase from, both Department of 16 Defense as well as VA as well as a bunch of other 17 agencies. 18 That contract had a provision that 19 said if you raise your catalog prices and you 20 raise your contract prices, you can qualify for 21 raising your FSS prices. 22 It was still a negotiable issue on</p>	<p style="text-align: right;">Page 249</p> <p>1 What we were saying here is on a 2 worst case basis if in fact the theory that AWP 3 drove product purchase decisions, worst case, this 4 is how Alternate Site Product Sales would be 5 impacted by us reducing our list price. 6 Q. How did you arrive at that calculation, 7 or those two calculations, of \$2.9 million and 8 \$8.8 million? 9 A. Some of it was we looked at a rehash of 10 Lynn Leone's analysis, and by this time we had a 11 little more specific knowledge of what products we 12 were going to change and so on and so forth. So 13 that's how we did it. 14 We said, okay, if all of a sudden 15 now our list prices are going down significantly 16 and we would assume that we would have the lowest 17 list prices for products, then the theory that the 18 highest list, highest AWP, if it in fact was a 19 function of list, we would lose those sales to our 20 competitor. That's what we did. 21 Q. So there was a recognition then that the 22 higher AWP in the market would get the business?</p>

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<p>1 be.</p> <p>2 BY MS. ST. PETER-GRIFFITH:</p> <p>3 Q. If you could move on -- oh, let me ask</p> <p>4 you, at any time from 1991 until 2001 did Abbott</p> <p>5 ever notify any state or federal official about</p> <p>6 what its actual contract prices were that it was</p> <p>7 charging its customers?</p> <p>8 MS. TABACCHI: Object to the form,</p> <p>9 beyond the scope of the Notice.</p> <p>10 MS. ST. PETER-GRIFFITH: No, it's not.</p> <p>11 THE WITNESS: It was not our</p> <p>12 understanding that that was a requirement of any</p> <p>13 entity.</p> <p>14 We thought the government had a</p> <p>15 good picture of our nonlist price prices. They</p> <p>16 had quarterly publications of our AMP, they had</p> <p>17 our Federal Supply Schedule prices, we had prices</p> <p>18 negotiated with the DOD.</p> <p>19 So we thought if a government</p> <p>20 agency needed it, it was within the government</p> <p>21 agency's purview already.</p> <p>22 BY MS. ST. PETER-GRIFFITH:</p>	<p>1 the VA contracting officers, they would tell you</p> <p>2 yes, they were, because we actually had to</p> <p>3 disclose across, whenever we either changed the</p> <p>4 price or renegotiated prices or negotiated a new</p> <p>5 contract, we had to disclose actual sales in that</p> <p>6 negotiation.</p> <p>7 BY MS. ST. PETER-GRIFFITH:</p> <p>8 Q. So you disclosed --</p> <p>9 A. Our lowest price.</p> <p>10 Q. Your lowest price, which is your lowest</p> <p>11 HPD price that you charged your contractors --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- or your customers?</p> <p>14 A. Yes.</p> <p>15 Q. What indicated to the United States that</p> <p>16 your Federal Supply Schedule prices or your DOD</p> <p>17 prices were in line with your actual contract</p> <p>18 prices that you were charging customers?</p> <p>19 MS. TABACCHI: Object to the form.</p> <p>20 THE WITNESS: I just went through that.</p> <p>21 BY MS. ST. PETER-GRIFFITH:</p> <p>22 Q. Okay. So it's the fact that DOD and the</p>
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<p>1 Q. Were the DOD prices or the Federal</p> <p>2 Supply Schedule prices that you charged to the</p> <p>3 United States in line with Abbott's Alternate Site</p> <p>4 catalog prices?</p> <p>5 MS. TABACCHI: Object to the form.</p> <p>6 THE WITNESS: Alternate Site did not</p> <p>7 have a catalog.</p> <p>8 BY MS. ST. PETER-GRIFFITH:</p> <p>9 Q. HPD catalog prices.</p> <p>10 MS. TABACCHI: Object to the form,</p> <p>11 beyond the scope of the Notice.</p> <p>12 MS. ST. PETER-GRIFFITH: It is not</p> <p>13 beyond the scope of the Notice.</p> <p>14 THE WITNESS: Federal Supply Schedule</p> <p>15 prices were contractually negotiated prices that</p> <p>16 were below our published prices.</p> <p>17 BY MS. ST. PETER-GRIFFITH:</p> <p>18 Q. But were they in line with your contract</p> <p>19 prices that you were charging to your HPD</p> <p>20 customers, including your Alt. Site customers?</p> <p>21 MS. TABACCHI: Object to the form.</p> <p>22 THE WITNESS: I think if you were to ask</p>	<p>1 VA received your lowest price?</p> <p>2 MS. TABACCHI: Object to the form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. ST. PETER-GRIFFITH:</p> <p>5 Q. And what is it about the quarterly --</p> <p>6 A. Well, let me go back.</p> <p>7 They may or may not have been given</p> <p>8 on a contract our lowest price, but our disclosure</p> <p>9 to them had to include the lowest prices that we</p> <p>10 had billed for the products.</p> <p>11 Q. Did Abbott at any time ever go to the</p> <p>12 United States and say hey, you know, our catalog</p> <p>13 prices are much higher than the prices that we're</p> <p>14 charging under the Federal Supply Schedule or the</p> <p>15 DOD prices?</p> <p>16 MS. TABACCHI: Object to the form, asked</p> <p>17 and answered. He just testified about</p> <p>18 communications with the government.</p> <p>19 MS. ST. PETER-GRIFFITH: Counsel, don't</p> <p>20 coach the witness. If you can just let him answer</p> <p>21 the question, please.</p> <p>22 MS. TABACCHI: If you can stop asking</p>

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